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IN THE

SUPREME COURT OF THE UNITED STATES

No. 572

October Term, 1967

CHARLES E. MOORMAN and
EARLINE B. MOORMAN, his wife,

Petitioners

v.

WILLIAM T. THOMAS
OLIVE R. THOMAS, and
WILLIAM T. THOMAS, JR.,

Respondents

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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INDEX

Statement of the Facts 1

Argument 1

Conclusion 3

TABLE OF AUTHORITIES

CASES CITED

Margraf v. County of Los Angeles, 301 P.2d 490 (1956) 2

STATUTES

Soldiers' and Sailors' Civil Relief Act § 205 (Title 50 U.S. Code, 1964, Vol. 11, page 9586) (50 USCA § 525, Appdx.) 2

Compiled General Laws of Florida 1927, § 1000, page 356 2

§ 194.02 Florida Statutes, 1965, page 801 2

§ 194.54 Florida Statutes, 1965, page 815 3

Appendix 4

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Come now the Petitioners, Charles E. Moorman, and Earline B. Moorman, his wife, by and through their undersigned attorneys and respectfully submit this their Reply Brief in support of their Petition for Certiorari to the Supreme Court of Florida.

STATEMENT OF THE CASE

Petitioners reiterate the second Federal question stated in their Petition for Certiorari filed herein, and reiterate the validity of said question.

ARGUMENT

Respondents' argument in their Brief does not really constitute a reply to the questions and argument and citations of au-

thority set out in the Petition for Certiorari. Respondents' argument is essentially merely begging the question.

Section 205 of the Soldiers' and Sailors' Civil Relief Act (Section 525, USCA, Vol. 50, Appdx. 9) provides that no part of a person's time in military service may be included in the period of time that person is allowed for the redemption of real property sold for taxes. In the case at bar, part of the time Petitioner Moorman spent in military service *was* included in computing his time for redemption of the land in question, because application for tax deed was made and the land advertised for sale during the running of redemption time as required by Section 1000, Compiled General Laws of Florida, 1927, and Section 194.16 Florida Statutes, 1965. These things are jurisdictional. They were done while Petitioner Moorman was in military service. It was upon the basis of these things that the tax deed was issued. Respondents have never made any answer to these facts, because there is not any answer they can make.

The appellants in Margraf v. County of Los Angeles, 301 P2d 490 (1956) cited in the Petition for Certiorari filed herein contended that a sale of property while its owner was in military service could proceed, but that it did not actually terminate the redemption period. The California court rejected this contention as pointed out in the Petition for Certiorari filed herein, page 12, and made the following additional observation:

> "As a practical matter such a holding as that invoked by appellant would present numerous problems in effectuating a redemption after returning from the service, problems as to amount to be paid, rate of interest, etc."

Section 194.02 Florida Statutes provides for the collection of interest on the redemption of tax certificates at not in excess of twelve per cent per annum the first year and eight per cent per annum for the time after the first year. Section 194.54 Florida Statutes, 1965 provides that the grantee of a tax deed is entitled

to immediate possession. Under the Respondents' theory of the meaning of Section 205 of the Soldiers' and Sailors' Civil Relief Act, the accumulated interest on the tax certificate accruing during the redemption period would have to be paid by the Petitioner, also the costs incident to advertising the property for sale. Too, the affirmative duty would be on the returning veteran (Petitioner) of taking action to redeem the property by instituting suit to do so and/or instituting ejectment proceedings against the purchaser of the tax deed. All of these things are precisely the things which the Soldiers' and Sailors' Civil Relief Act was enacted to prevent.

With respect to the comments of the Respondents concerning Petitioners' asserted second Federal question, Petitioners reassert the argument contained in their Petition for Certiorari hereto filed and say that the opinion of the Supreme Court of Florida to which review is sought clearly denies the Petitioners equal protection of the laws contrary to the 14th Amendment of the United States Constitution.

CONCLUSION

For the reasons stated herein and in the Petition for Certiorari, Petitioners reiterate the prayer for relief stated in the Petition for Certiorari.

Respectfully Submitted,

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APPENDIX

Section 194.02 Florida Statutes—Lands sold to purchaser other than county may be redeemed.

(1) Any person, or agent of any person, owning or claiming such lands sold for taxes, or any part or parcel thereof, or any interest therein, or the creditor of any such owner or claimant may redeem the same at any time after such sale and before a tax deed is issued therefor, by paying to the clerk of the circuit court of the county wherein such land is situated the face of the certificate of sale, or such portion thereof as the part or interest redeemed shall bear to the whole, and interest thereon from the date of the certificate, together with the fee of fifty cents for the clerk for each certificate or part of certificate so redeemed. Such interest on lands hereafter sold shall be at the rate per annum bid by the purchaser for the period of time from the date of the certificate, not in excess of twelve per cent per annum and eight per annum for the time after the first year, but not less than five per cent of the face of the certificate.

Section 194.54 Florida Statutes—Grantee of tax deed entitled to immediate possession.

Any person, firm, corporation or county who may be the grantee of any tax deed under this law, or any county acquiring lands for delinquent taxes as herein provided, or the county's grantee of such lands upon sale as herein authorized, shall be entitled to the immediate possession of the lands described in such deed or decree, and after making demand for possession, if the same is refused, may file a petition in the circuit court for such county, and thereon obtain an order to show cause from the circuit judge, returnable in five days, directed to the person or persons so refusing to deliver possession, requiring them to show cause why writ of possession should not issue. Upon the filing

of the answer to the rule to show cause, the matter shall proceed as in chancery cases. If, upon such hearing, no cause is shown, an order may issue from the circuit judge to the sheriff of the county, directing him to put the grantee in possession of such lands. The fee of the clerk for filing the petition and other pleadings aforesaid shall be two dollars and fifty cents, and the fee of the sheriff for serving the order to show cause shall be one dollar and for serving the writ of possession, one dollar, plus mileage allowances as now provided by law.